

PT 00-38

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

CATHOLIC DIOCESE OF BELLEVILLE)		
Applicant)		
)	Docket #	95-44-7
v.)		
)		
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		
and)		
NEW SIMPSON HILL COMMUNITY)	Parcel Index #	03-34-303-000
CONSOLIDATED SCHOOL DISTRICT)		
NO. 32 and VIENNA HIGH SCHOOL)		
DISTRICT 13-3)	Barbara S. Rowe	
Intervenors)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: David Wells and Catherine A. Schroeder of Thompson Coburn for the Catholic Diocese of Belleville, Merry C. Rhodes of Robbins, Schwartz, Nicholas, Lifton, and Taylor, Ltd. for New Simpson Hill Community Consolidated School District No. 32 and Vienna High School District No. 13-3.

Synopsis:

The hearing in this matter was held at the State Office Complex, Collinsville, Illinois on September 29, 1999, and September 30, 1999, to determine whether or not Johnson County Parcel Index No. 03-34-303-000 qualified for exemption during the 1995 assessment year.

Patrick Higgs, Executive Director, of the Catholic Diocese of Belleville, (hereinafter referred to as the "Applicant") Judith Woodrow, a non-Catholic volunteer, and Father James Margason, Vicar General of the Diocese of Belleville and pastor of St. Luke Parish in Belleville,

Illinois, were present and testified on behalf of the applicant. Terry Elms, Superintendent of New Simpson Hill School District No. 32 was present and testified in behalf of the Intervenor, New Simpson Hill School District No. 32 and Vienna High School District 13-3.

The issues in this matter include: first, whether the applicant was the owner of the parcel during the 1995-assessment year; secondly, whether the applicant is a religious organization; and lastly, whether the portion of the parcel at issue was used by the applicant for exempt religious or charitable purposes during the 1995-assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned this parcel during all of the 1995-assessment year. It is also determined that the applicant is a religious organization. Finally, it is determined that the applicant did not use the portion of the parcel at issue for religious or charitable purposes during the 1995-assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that a part of Johnson County Parcel Index No. 03-34-303-000 did not qualify for a property tax exemption for the 1995-assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (September 29, 1999, Transcript (hereinafter referred to as "9/29/99 Tr.") p. 14)

2. The applicant acquired the subject parcel by a quitclaim deed dated June 23, 1959. The property includes Camp Ondessonk, the St. Noel Retreat and Conference Center, an infirmary, staff housing, a garage, the hilltop residence of the executive director and his family, the residence of the camp ranger, and the residence of the director of program services. (Dept. Ex. No. 2)

3. I take administrative notice of the fact that the Department granted the requested exemption for portions of this parcel for the year at issue. Of the portions not exempted, the applicant protested only the denial of exemption for the St. Noel Retreat and Conference Center (hereinafter referred to as "St. Noel" or "the Center") and the land on which it stands. Therefore, this is the only portion of the subject property at issue. (Dept. Ex. Nos. 3 & 4)

4. The affidavit of Incorporation of Camp Ondessonk was filed in the office of the Secretary of State of the State of Illinois on June 4, 1965, pursuant to the provisions of the Religious Corporation Act. The purpose of the camp is:

To provide youth with a learning opportunity of self-expression and a spirit of adventure. To promote a better understanding and appreciation of the Creator through the beauty of creation and nature. To present opportunities for mutual cooperation and respect for his fellow human beings.

The mission statement says:

The goal of Camp Ondessonk is to provide year round, adventurous outdoor experiences for the educational and spiritual enrichment of the youth, families and the elderly. Through camping programs, retreats, outdoor education and special programs, participants will gain in understanding themselves, their neighbors, their natural world and God, in a Catholic tradition. (Dept. Ex. No. 2 pp. 19-22; September 30, 1999, Transcript (hereinafter referred to as "9/30/ 99 Tr.") pp. 7-8)

5. Camp Ondessonk was formed in 1959. It is a 981 acre youth camp. The camp hosts approximately 3,500 campers per year between the ages of 9 and 15. The camp and St. Noel are the applicant's major outdoor ministry tool. The area is located in the Shawnee National Forest in Southern Illinois and offers opportunities for hiking, horseback riding, swimming, and boating. (9/29/99 Tr. pp. 29-30, 33-34, 154-155; 9/30/99 Tr. pp. 9, 10, 19-22)

6. The campers at Camp Ondessonk stay in a cabin, caves, and tree houses. (9/29/99 Tr. p. 32)

7. St. Noel was completed and opened in April/May 1992. It was constructed to promote the utilization of the area by adults, families, and the elderly. The building is used for adults who wish to come to experience some of the spiritual or religious experiences that are connected in the outdoor setting. The parents of campers who travel a distance to come to camp and stay overnight before returning to their homes also use it. Camp Ondessonk draws campers from the Chicago area as well as participants from neighboring states. Volunteers who have helped to build and maintain the camp area also sometimes stay at St. Noel. (Dept. Ex. No. 2; 9/29/99 Tr. pp. 30, 113-114; 9/30/99 Tr. pp. 12, 14, 23-24)

8. One of the volunteers that stayed at St. Noel appeared and testified for the applicant. She was a guest in St. Noel from June 29, 1995, through July 1, 1995, for two nights and was charged \$129.25 for the lodging and a meal. As a child, she attended Camp Ondessonk as a fifth-grade camper and continued on to become a staff member. Her visit in 1995 was to see how Camp Ondessonk was run with the campers present and to visit a friend in the area. (Group Ex. No. 1 D000895; 9/29/99 Tr. pp. 124-125)

9. The two-story building that is the St Noel contains a lower level as well. Located in the lower level are the kitchen, rest rooms, a dining hall/meeting room, a chapel, a housekeeping storage area, the library and snack area, and stairways to the upper floors. On the first floor are 6 lodging rooms, a reception/meeting room, a conference room, a message board, and stairways. On the second floor are 6 lodging areas and stairs. (Dept. Ex. No. 2 pp. 30, 34)

10. There is no priest assigned to St. Noel and no religious services are performed at the center on a regular basis. (9/29/99 Tr. p. 111; 9/30/99 Tr. pp. 24-27)

11. The board of trustees of Camp Ondessonk is also responsible for the operation of St. Noel. The same staff operates the camp and center. From January to May 1995 the bookkeeping, registrar, and administrative offices of the camp were operated from the conference room of the center. The business manager and registrar moved closer to the main areas of the camp when space became available. (9/29/99 Tr. pp. 25-28, 35-41, 65; 9/30/99 Tr. pp. 10-11)

12. St. Noel was used for lodging, meals, meetings, and a wedding reception during 1995. The total income to the applicant for the events held in the center between January 1, 1995, and December 31, 1995, was \$37,697.73. (Dept. Ex. No. 2 pp. 8-10, 28; Group Ex. No. 1; Applicant's Ex. No. 10; 9/29/99 Tr. pp. 66-80)

13. Each group that stays at the center fills out a registration form. A registration fee is charged to everyone who signs up to use the facility. (Group Ex. No. 1; 9/29/99 Tr. pp. 66-68, 87-89)

15. Each of the lodging areas in St. Noel contains two double beds, nightstands and lamps, a crucifix, and a Bible. Televisions are located in the common areas. (Applicant's Ex. No. 6; 9/29/99 Tr. pp. 49-50)

16. The brochure in use for St. Noel in 1995 lists retreats, conferences and meetings, Spring Wildflower or Fall Color weekends, holiday parties, senior tours, "Who-Dun-it?" mystery weekends, wedding receptions, rehearsal dinners, and family reunions as year-round program possibilities that are available. There were no mystery weekends conducted or scheduled in 1995. (Group Ex. No. 2; 9/29/99 Tr. pp. 54-59)

17. Reduced seasonal rates were available for the center for the period of January 2, 1995, through April 30, 1995. The applicant had higher rates for business groups than the rates quoted for families, non-profit, and church groups. The applicant has no policy for waiving fees, either written or otherwise, if someone could not afford to stay at the center. (Group Ex. No. 3 & 4; 9/29/99 Tr. pp. 59-63, 68, 112)

18. In 1995 the applicant advertised its facility in the "Southern Illinois Official Visitors guide", in the "Southernmost Illinois Visitors guide", in The New World News, an Archdiocese newspaper of the Archdiocese of Chicago, and on the local television affiliate WSIL TV 3. The television spot was for holiday parties at the end of 1994 which included New Year's 1995. (Intervenor's Ex. Nos. 4, 7, 9 & 10; 9/29/99 Tr. pp. 101-106, 113)

19. As part of the United States Catholic Conference, the applicant was granted an exemption from federal income tax on March 25, 1946, pursuant to a determination by the Internal Revenue Service that it was an exempt organization under §501(c)(3) of the Internal Revenue Code. (Dept. Ex. No. 2 pp. 31-32)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. The exemption statute that the applicant asserts is applicable in this situation is the religious exemption found at 35 ILCS 200/15-40. That portion of the statute exempts certain property from taxation in part as follows:

§ 15-40. Religious purposes, orphanages or school and religious purposes.
All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . and not leased or otherwise used with a view to profit,. . . .

The religious use exemption from property tax contained in the Illinois statute is strictly a use exemption with the caveat the property cannot be leased or otherwise used with a view to profit. Therefore under this statute, the use of the subject parcel must be scrutinized in conjunction with the applicable case law.

In The People v. Deutsche Gemeinde, 249 Ill. 132 the Court stated:

Unless facts are stated from which it can be seen that the use is religious or a school use in the sense in which the term is used in the constitution the

application should be denied. The words used in the constitution are to be taken in their ordinary acceptation and under the rule of strict construction, which excludes all purposes not within the contemplation of the framers of that instrument. While religion, in its broadest sense, includes all forms and phases of belief in existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations. As applied to the uses of property, a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools and religious instruction.

Applicant's brochure states that the activities carried on at St. Noel include retreats, conferences and meetings, seasonal events, senior tours, "who-dun" it mysteries, wedding receptions, rehearsal dinners, family reunions, and summer specials. Based upon the evidence of record, these are the primary uses of St. Noel. Those activities are not religious activities as identified in The People v. Deutsche Gemeinde, *supra*.

The use of the property in question is not as a stated place for public worship, Sunday school, or religious instruction. There is no priest or clergyman assigned to the center. Regular religious services do not take place in the chapel or in any other area of the building. Nor does this change just because a religious group may hold a meeting. Just because a crucifix or Bible is placed in a hotel room does not make the use of the room religious. I therefore find that applicant's use of St. Noel is not a religious use under the Illinois statutes.

The applicant asserts that the fact that there is a room rental charge in connection with third-party use of St. Noel is an insufficient basis for finding that it is being operated with a view toward making a profit and cites a number of cases to support that proposition. However, the facts of those cases are distinguishable from the facts presented herein¹. First, the applicant charges a registration fee to every one that stays at St. Noel. Although the applicant asserts in its

¹ Listed on applicant's 11/22/99 brief p. 21 in support of the proposition were the following cases: Childrens Development Center v. Olson, 52 Ill. 2d 336 (1972), First Presbyterian Church of Dixon v. Zehnder, 306 Ill.App.3d 1114 (2nd Dist. 1999), and Victory Christian Church v. Dept. of Revenue, 264 Ill.App.3d 919 (1st Dist. 1994) discussed on pages 9 and 10 of this recommendation. The other case, Decatur Sports Foundation v. Dept. of Revenue, 177 Ill.App.3d 696 (4th Dist. 1988), is distinguishable because I do not have at issue before me the question of whether the owner of softball fields, who was found to be a charitable organization and who put the fields to charitable use qualifies for an exemption. As discussed in this body of this recommendation, the applicant does not use St. Noel in a manner that would qualify for a charitable exemption.

brief that the most compelling evidence for granting the exemption in this case was that of the non-Catholic volunteer who lodged at St. Noel, I note that she was charged for her lodging and used St. Noel as she would have used any other commercial hotel. She came back to the area to visit a friend and to see Camp Ondessonk with the campers present. Ms. Judith Woodrow's stay was neither a religious or charitable activity. The applicant's reliance on this evidence is thus misplaced.

I take administrative notice that the Department in Docket No. 95-44-07 granted an exemption to Camp Ondessonk because the ownership and use of that parcel was exempt. A church may use its religious property to fulfill the charitable missions of the church. *See First Presbyterian Church of Dixon v. Zehnder*, 306 Ill.App.3d 1114 (2nd Dist. 1999). The applicant asserts that the link between Camp Ondessonk and St. Noel entitles the center to an exemption. That assertion is unsupported by facts. There is no question that Camp Ondessonk has been granted a property tax exemption by the Department². However, although there is some link between the camp and St. Noel, the facts regarding the primary use of St. Noel is such that the camp does not fulfill its charitable missions nor does the use of St. Noel by the camp rise to the level required by *First Presbyterian Church* and its predecessors. The applicant admitted that they do not waive fees at St. Noel. Further, case law supports the proposition that if a parcel of land is used for two purposes, one of which is exempt and one of which is not, the portion of the land used for exempt purposes is granted an exemption and the portion that is not is taxable. *See City of Chicago v. Illinois Department of Revenue*, 147 Ill.2d 484 (1992).

The facts before me are very similar to those in *Northern Ill. University Foundation v. Sweet*, 237 Ill.App.3d 28 (2nd Dist. 1992) (hereinafter referred to as "*Northern Illinois*"). In *Northern Illinois*, the foundation had received property to be used for conferences and retreats. The foundation was restricted by the grantor regarding the use and sale of the property. The

² Applicant's assumption that the Department granted the exemption for Camp Ondessonk as a religious use of that section of the property is not supported by the facts. Camp Ondessonk was granted a property tax exemption as a religious and charitable organization. *See* ALJ Nafziger's recommendation in Docket No. 84-44-3.

court held that the primary use of the property was the rental to virtually any outside group including for-profit groups that wanted to use the property and could afford the rental fees. Although in Northern Illinois, the foundation had requested an exemption under either the state ownership or educational use exemption, rather than the religious and charitable exemptions at issue herein, the Court's analysis is instructive. The court said, "We are unable to see how this conference center differs substantially from a privately owned, for-profit conference center or a commercial hostelry." *Id.* at 37. Similarly, I also do not find any difference between the applicant's use of St. Noel and a conference center or commercial hostelry.

It was asserted that reduced fees were charged to specific groups; however, there was no indication that fees were waived for those unable to pay. The assertion that fees were waived for clergy members of the applicant was not supported by documentation. The record shows that the fees charged are not incidental. In fact, the applicant's own witness, the non-Catholic volunteer, was charged \$62.50 per night for her lodging.

Regarding the cases cited by the applicant, I find them to be distinguishable from the facts at issue herein. There is no lease situation at issue in this matter between two exempt organizations as found in Childrens Development Center v. Olson, 52 Ill.2d 336 (1972). This is not as situation where a for-profit corporation leases property to a charitable organization as was the case in Coles-Cumberland Professional Dev. Corp. v. Dept. of Revenue, 284 Ill.App.3d 351 (4th Dist. 1996). In fact, Coles-Cumberland did not qualify for exemption. Nor is this a situation like Fairview Haven v. Dept. of Revenue, 153 Ill.App.3d 763 (4th Dist. 1987) in which an intermediate care nursing home for the elderly qualified for a property tax exemption, while the independent-living housing did not. Unlike the other facility, the intermediate care nursing home inhabitation was not determined on ability to pay. That was why the court found that area and the land upon which it stands to be exempt.

In First Presbyterian Church of Dixon v. Zehnder 306 Ill.App.3d 1114 (2nd Dist. 1999) a religious organization provided its property, for a one-time payment of \$1.00 to a charitable organization which provided food, toys, clothing, and furniture to the needy. The court

determined this to be an exempt situation. That situation is not before me. The court in Illinois Conference of the United Church of Christ v. Dep't. of Revenue, 165 Ill.App.3d 200 (3rd Dist. 1988) granted an exemption for a residence of a caretaker for an outdoor religious park. The case supports the exemption granted to Camp Ondessonk. However, St. Noel's is not a caretaker's residence and grounds used for religious services. Therefore, the case is not relevant or determinative.

In McKenzie v. Johnson, 98 Ill.2d 87 (1983), the Illinois Supreme Court held that the exemptions for parsonages, fraternities, and sororities were constitutional. This case does not involve a fraternity, sorority, or a parsonage³. *See also* Our Savior Lutheran Church v. Dept. of Revenue, 204 Ill.App.3d 1055 (5th Dist. 1990)(parsonage temporarily vacated still qualified for exemption.) In Victory Christian Church v. Dept. of Revenue, 264 Ill.App.3d 919 (1st Dist. 1994), the court held that property leased by a private for-profit owner to a religious organization, which was used for religious and school purposes, was not exempt from taxation. I do not have a lease by a private party to a religious organization before me. Resurrection Lutheran Church v. Dept. of Revenue, 212 Ill.App.3d 964 (1st Dist. 1991) involved a church renting property to a charitable organization for less than market value. Again, the issue herein is not a lease situation between a religious and charitable organization. In Evangelical Hospital Ass'n v. Novak, 125 Ill.App.3d 439 (2nd Dist. 1984) the Court held that the corporate headquarters for a charitable hospital qualified for an exemption. I do not have a corporate headquarters issue before me. I therefore find the cases cited by the applicant inapposite and distinguishable from the facts before me.

As to the issue of whether St. Noel's was used with a view to profit, the Illinois Supreme Court in Turnverein "Lincoln" v. Bd. of Appeals, 358 Ill. 135 (1934) *citing* People v. Withers Home, 312 Ill. 136, stated "that if property, however owned, is let for return, it is used for profit and so far as its liability to the burden of taxation is concerned, it is immaterial whether

³ The parsonage exemption is found at 35 ILCS 200/15-40. It is contained in the religious exemption section, but is a separate paragraph.

the owner actually makes a profit or sustains a loss.” *Id.* at 144. *See also* Salvation Army v. Dep’t of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988) *leave to appeal denied* and City of Mattoon v. Graham, 386 Ill. 180 (1944). Therefore, even if St. Noel did lose money in 1995, as asserted, that fact is not determinative.

The applicant has been determined by the Department to be a religious and charitable organization. The Illinois Supreme Court has interpreted the definition of charitable by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all that need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those that need and would avail themselves of the charitable benefits it dispenses;
- 6) and the term “exclusively used” means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old People’s Home at 157.

I find that the applicant has failed to show that the use of the St. Noel Center satisfies the criteria found in guidelines 2, 3, 5, and 6 as established in Methodist Old People's Home, *supra*. I conclude that, concerning St. Noel, the applicant does not derive its funds mainly from public and private charity. Further, as the income from St. Noel is from registration fees, food sold on the premises, and applicant's charges for lodging, it does not dispense charity to all that need and apply for it, it places obstacles in the way of those that need and would available themselves of the benefits, and the St. Noel Center is not exclusively used for charitable purposes. I therefore

find that the applicant's use of St. Noel does not qualify for an exemption under the charitable guidelines found in Methodist Old Peoples Home *supra*.

The Revenue Act allows different portions of real property to be taxed and exempted on the basis of the relevant test for exemption. City of Chicago v. Illinois Department of Revenue, *supra*. Where a piece of property is used for two purposes, one of which would exempt it from taxation and the other would not, it is proper to assess and levy tax against that part of the property that is devoted to a use not exempt from taxation. City of Mattoon v. Graham, *supra*; City of Lawrenceville v. Maxwell, 6 Ill.2d 42 (1955); People ex rel. Kelly v. Avery Coonley School, 12 Ill.2d 113 (1957). Although the camp and center have the same staff and board of directors, no case law has been put forth, nor have I been able to find any, that mandates the grant of exemption to this particular portion of this parcel. Rather, as stated above, when one area is used for exempt purposes and another area is not, the area not in exempt use does not qualify for exemption. Taxes should be imposed against that part of property that does not qualify for exemption when property is used for two purposes. Fairview Haven v. Dep't of Revenue, 153 Ill.App.3d 763 (4th Dist. 1987).

For the foregoing reasons, I recommend that the portion of Johnson County Parcel index No. 03-34-303-000 that contains the St. Noel Retreat and Conference Center and the land on which it stands, remains on the tax rolls for the 1995-assessment year and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
August 8, 2000